IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 219 of 2006
To
COMPANY PETITION No. 223 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUJAL LEASING & FINANCE PVT. LTD. - Petitioner(s)

Versus

. - Respondent(s)

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Appearance :
MS DHARMISHTA RAVAL for Petitioner(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 1,
MS AMEE YAJNIK for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/03/2007

ORAL JUDGMENT

Company Petition Nos.219 of 2006 to 222 of 2006 are filed by Sujal Leasing & Finance Pvt. Ltd., Tauras Infosys Ltd., Excell Multitech Ltd. and Seer Finlease Pvt. Ltd. respectively (all transferor companies) to consider and if thought fit to sanction the proposed scheme of amalgamation of the above referred transferor companies with Zenet Software Ltd. (the transferee company). Company Application No.223 of 2006 is filed by Zenet Software Ltd. (the transferee company) also to consider and if thought fit to sanction with or without modifications the proposed scheme of amalgamation of transferor companies into transferee company.

2. So far as Company Petition No. 219 of 2006 is concerned, it is submitted that having procured and produced the written approval of all the equity shareholders and unsecured creditors of the company and there being no secured creditors, pursuant to the order passed by this Court dated 17-11-2006 passed in Company Application No.606 of 2006, the meetings of the equity shareholders and the unsecured creditors in relation to the proposed scheme of amalgamation as required under section 391(2) of the Companies Act, 1956 were dispensed with.

Similarly, as regards Company Petition No. 220 of 2006 is concerned, it is submitted that having procured and produced the written approval of all the equity shareholders and unsecured creditors of the company and there being no secured creditors, pursuant to the order passed by this Court dated 17-11-2006 passed in Company Application No.607 of 2006, the meetings of the equity shareholders and the

unsecured creditors in relation to the proposed scheme of amalgamation as required under section 391(2) of the Companies Act, 1956 were dispensed with.

So far as Company Petition No. 221 of 2006 is concerned, it is submitted that having procured and produced the written approval of all the equity shareholders and secured creditors of the company and there being no unsecured creditors, pursuant to the order passed by this Court dated 17-11-2006 passed in Company Application No.608 of 2006, the meetings of the equity shareholders and the secured creditors in relation to the proposed scheme of amalgamation as required under section 391(2) of the Companies Act, 1956 were dispensed with.

Company Petition No. 222 of 2006 is concerned, it is submitted that having procured and produced the written approval of all the equity shareholders of the company and there being no secured as well as unsecured creditors, pursuant to the order passed by this Court dated 17-11-2006 passed in Company Application No.609 of 2006, the meeting of the equity shareholders in relation to the proposed scheme of amalgamation as required under section 391(2) of the Companies Act, 1956 was dispensed with.

Company Petition No. 223 of 2006 is concerned, it is submitted that having procured and produced the written approval of all the equity shareholders of the company and there being no secured as well as unsecured creditors, pursuant to the order passed by this Court dated 17-11-2006 passed in Company Application No.610 of 2006, the meeting of the equity shareholders in relation to the proposed scheme of amalgamation as required under section 391(2) of the Companies Act, 1956 was dispensed with.

3. It is submitted that it is considered advantageous to amalgamate the transferor companies with the transferee company. It is also further submitted that the amalgamation would result in optimum utilization of the management and other resources and would reduce the administrative costs. It is also further submitted that the resources of the companies will be conveniently merged and pooled together leading to a more effective and centralized management and reduction in administrative expenses and overheads which are presently being multiplicated because of separate entities. It is further submitted that the amalgamation will result in the larger pool of financial and other resources, which will enable the amalgamated company to broaden its asset base and in long run improve financial gearing.

4. After all the company petitions were admitted, the dates of their final hearing were duly advertised in Indian Express(English daily) and Sandesh (Gujarati daily) and the necessary affidavits have been filed with regard to the advertisement in the aforesaid newspapers. Publications in Government Gazette were dispensed with as per the direction given by this Court. Nobody has submitted any objection against the proposed scheme of amalgamation.

5. Notices of all the petitions have been served upon the Central Government. Ms. Amee Yagnik, learned Addl. Central Government Standing Counsel appeared on behalf of the Regional Director. She has produced on record the letters dated 1-2-2007 and 28-2-2007 along with the affidavits of the Asst. Registrar of Companies, in the office of ROC,

Gujarat. In the communication dated 1-2-2007, it has been submitted by the Regional Director that the Directorate has decided not to oppose the present petitions, save and except that:-

(a) The second, third, fourth transferor companies and transferee company i.e. M/s Tauras Infosys Ltd., M/s Excell Multitech Ltd., M/s Seer Finlease Pvt. Ltd. and M/s Zenet Software Ltd., were inspected u/s 209A of the Companies Act, 1956 and action for initiating prosecution on the basis of inspection report for relevant violations of the Companies Act, 1956 are under process.

(b) The transferee company is not having sufficient authorised capital for issue of shares, hence before issue of shares transferee company is required to increase its authorised capital and accordingly to comply u/s 94/97 of the Companies Act, 1956.

After the first affidavit dated 2-2-2007 along with communication of the Regional Director dated 1-2-2007 raising the following objections, the petitioners more particularly, the transferee company has filed the affidavit pointing out that they are having sufficient authorized capital for issue of the shares (page 479) and the said affidavit was sent to the Regional Director, so as to enable the Regional Director to satisfy with regard to sufficiency of authorized capital for issue of shares. Thereafter, it appears that a further report has been submitted by the Regional Director dated 28-2-2007 submitting that the Directorate has decided not to oppose the present petitions, except that as stated in clause 8.4 of the scheme of amalgamation, upon the scheme becoming finally effective, the authorized share capital of the transferor companies would be merged to the authorized share capital of the transferee company without the requirement of payment of any ROC fees/stamp duty/registration charges. Thus, it appears that except clause No.8.4, with regard to sufficiency of authorized capital for issue of shares by the transferee company, the office of Regional Director is satisfied.

6. Thus, now considering the communications/objections raised by communication dated 1-2-2007 and 28-2-2007, it appears that there are only two objections (1) action for initiating prosecution on the basis of the inspection report for relevant violations of the Companies Act, 1956 with regard to 2nd, 3rd and 4th transferor companies and the transferee company are under process and (2) with regard to clause No.8.4 of the scheme of amalgamation.

7. All the respective Directors of the respective petitioners, the transferor companies as well as petitioner, the transferee company have filed separate affidavits in each of the company petitions submitting that even if the scheme is sanctioned and the transferor company is amalgamated into the transferee company and the prosecution is initiated by the department of Company Affairs and/or any other authority under the provisions of the Companies Act, they will not raise any defence against the above prosecution on the ground of amalgamation. Even, a further affidavit is also filed on behalf of the transferee company submitting that in the scheme submitted by the transferor company for the approval of this Court, there is a specific clause in the scheme, wherein it is provided that the legal proceedings will not abate on account of scheme of amalgamation sanctioned by the Court and that the transferee company has adequate authorized capital to be able to issue shares in pursuant to the scheme of amalgamation. Ms Dharmishta Raval, learned advocate appearing on behalf of the respective petitioners has submitted that so far as objection with regard to clause No.8.4 in the scheme is concerned, the same will be deleted and it is to be treated as deleted and whatever the

fees/stamp duty/registration charges are to be paid, the same shall be paid.

8. The Official Liquidator has also submitted its report in each of the company petitions filed by the transferor companies dated 14-2-2007 on the basis of the report of the Chartered Accountant with regard to affairs of the companies and it is submitted by the Official Liquidator that the acts and prosecution of the companies were conducted without the objections mentioned in the Memorandum of Association of the company and the affairs of the company have not been conducted in a manner prejudicial to the interest of the members or to public interest.

9. So far as the objection raised by the Regional Director with regard to the proposed initiation of the prosecution on the basis of the inspection report for relevant violations of the Companies Act, 1956, Ms Raval has relied upon two decisions of this Court (1) Arvind Mills Ltd. V. State of Gujarat rendered in Company Petition No.140 of 2001 and (2)Aditya Birla Nuvo Ltd. V. Vishweshwar Madhav Rao Raste and others rendered in Company Petition No.l76 of 2005. Relying upon the aforesaid two decisions, it is submitted that in the case, where the prosecutions were proposed and/or were under contemplation, the schemes have been sanctioned. She has also further submitted that even, otherwise, as per the scheme itself, on sanctioning the proposed scheme of amalgamation, any proceedings against the transferor companies would not be abated and the same would be continued and neither the transfer companies nor the transferee company would take any defence that on sanctioning the proposed scheme of amalgamation of transferor companies with the transferee company, there shall be no prosecution and/or proceedings.

10. I have heard Ms. Dharmishta Raval, learned advocate appearing on behalf of the respective petitioners and Ms Amee Yagnik, learned Addl. Central Government Standing Counsel appearing on behalf of the Central Government. The scheme has detailed the benefits which it will bring to all the aforesaid companies under the same management on account of amalgamation of all the companies. It is submitted that the amalgamation would result in optimum utilization of the management and other resources and would reduce the administrative costs. The resources of the companies will be conveniently merged and pooled together leading to a more effective and centralized management and reduction in administrative expenses and overheads which are presently being multiplicated because of separate entities. It is further submitted that the amalgamation will result in the larger pool of financial and other resources, which will enable the amalgamated company to broaden its asset base and in long run improve financial gearing. All the shareholders as well as the secured creditors of all the companies have approved the scheme of amalgamation and there is no objection from any of the shareholders or any of the creditors to the scheme of amalgamation. Despite advertisement of public notice of all these petitions in two daily newspapers i.e. Indian Express and Sandesh having largest circulation in the State, nobody has submitted any objection. Learned advocate appearing on behalf of the respective petitioners has submitted to delete clause No.8.4 of the scheme. So far as the objection by the Central Government i.e. Regional Director that the prosecution is proposed under the provisions of the Companies Act, 1956 is concerned, it is required to be noted that as on date, there is no prosecution launched against any of

the company. Apart from that, the respective Directors of the respective petitioners transferor companies as well as the transferee company have filed separate affidavits submitting that if any prosecution is launched/initiated, in that case, they will not raise any defence against the prosecution on the ground of amalgamation. An affidavit is also filed on behalf of the transferee company submitting that any legal proceedings/prosecution shall not be abated on sanctioning the scheme of amalgamation and that all the proceedings/prosecution made continue. Even, in the scheme, it is provided as under:

"If any suit, writ petition, appeal revision or other proceedings of whatever nature (hereinafter called "the Proceedings") by or against any of the Transferor Companies are pending, the same shall not ablate, be discontinued or be in any way prejudicially affected by reason of the transfer of the undertaking of the Transferor Companies or of anything contained in the Scheme, but the Proceedings may be continued, prosecuted and enforced by or against the Transferee Company in the same manner and to the same extent as it would be or might have been continued, prosecuted and enforced by or against the Transferor Companies as if the Scheme had not been made. On and from the Effective Date, the Transferee Company shall and may initiate any legal proceedings for and on behalf of the Transferor Companies."

11. Thus, considering the above, there is no impediment in sanctioning the scheme of amalgamation. The scheme of amalgamation does not appear to be contrary to law or contrary to public interest. The objections raised by the Central Government are dealt with hereinabove. Hence, there does not appear to be any impediment to sanction the scheme of amalgamation as proposed.

12. For the reasons as stated above and subject to deleting clause 8.4 of the scheme and subject to prosecution if any against any of the transferor

companies and/or transferee company under the provisions of the Companies to continue against all responsible, all these company petitions i.e. Company Petition Nos. 219 to 223 of 2006 are hereby allowed. The proposed scheme of amalgamation of amalgamating Sujal Leasing & Finance Pvt. Ltd., Tauras Infosys Ltd., Excell Multitech Ltd. and Seer Finlease Pvt. Ltd. with Zenet Software Ltd. is hereby sanctioned. All consequential reliefs on sanctioning of the scheme of amalgamation is also granted.

13. So far as costs to be paid to the learned Addl. Central Government Standing Counsel is concerned, the same is quantified at Rs.3500/- per petition and the same may be paid by the petitioners to Ms Amee Yagnik, the learned Addl. Central Government Standing Counsel .

(M.R. SHAH, J.)

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